

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MICHAEL W. BROWN,	:	Case No. 3:11-cv-331
Plaintiff,	:	District Judge Thomas M. Rose
vs.	:	Magistrate Judge Michael J. Newman
COMMISSIONER OF	:	
SOCIAL SECURITY,	:	
Defendant.	:	

**ENTRY AND ORDER OVERRULING BROWN'S OBJECTIONS (Doc. #16)
TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION;
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION (Doc. #15) IN ITS ENTIRETY; AFFIRMING THE
COMMISSIONER'S DECISION THAT BROWN WAS NOT DISABLED;
AND TERMINATING THIS CASE**

Plaintiff Michael W. Brown ("Brown") brought this action pursuant to 42 U.S.C. § 405(g) for judicial review of the decision of the Defendant Commissioner of Social Security (the "Commissioner") that he was not disabled and, therefore, unentitled to Social Security disability benefits. Additionally, Brown requests that his case be remanded to the Commissioner for consideration of new medical evidence pursuant to the Sixth Sentence of § 405(g). On July 31, 2012, United States Magistrate Judge Michael J. Newman entered a Report and Recommendation (doc. #15) recommending that Plaintiff's Sixth Sentence Remand request be denied, and the Commissioner's decision be affirmed. Brown subsequently filed Objections (doc. #16). This matter is, therefore, ripe for decision.

Brown filed applications for Disability Insurance Benefits and Supplemental Security Income on July 10, 2008, alleging disability due to diabetes and impairments in his feet. His alleged onset date was June 4, 2008.

The Commissioner denied Brown's applications initially and on reconsideration. Administrative Law Judge ("ALJ") Carol Bowen held a hearing following which she determined that Brown is not disabled. The Appeals Council denied Brown's request for review, and ALJ Bowen's decision became the Commissioner's final decision. Brown then appealed to this Court pursuant to 42 U.S.C. § 405(g).

This Court's function is to determine whether the record as a whole contains substantial evidence to support the ALJ's decision. *Bowen v. Comm'r of Soc. Sec.*, 478 F.3d 742, 745-46 (6th Cir. 2007). This Court must also determine whether the ALJ applied the correct legal criteria. *Id.* Regarding the substantial evidence requirement, the ALJ's findings must be affirmed if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)(citing *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)); *Landsaw v. Sec'y of Health & Human Servs.*, 803 F.2d 211, 213 (6th Cir. 1986). Substantial evidence is more than a mere scintilla, but only so much as would be required to prevent a directed verdict (now judgment as a matter of law) against the Commissioner if this case were being tried to a jury. *Foster v. Bowen*, 853 F.2d 483, 486 (6th Cir. 1988); *NLRB v. Columbian Enameling and Stamping Co.*, 306 U.S. 292, 300 (1939).

After considering the Administrative Record and briefing by the parties, Magistrate Judge Newman issued a detailed and thorough Report and Recommendation recommending that the Commissioner's non-disability finding be affirmed. Based upon the reasoning and citations of authority set forth in the Magistrate Judge's Report and Recommendation (doc. #15) and in Brown's Objections (doc. #16), as well as upon a thorough *de novo* review of this Court's file, including the Administrative Transcript, and a thorough review of the applicable law, this Court

adopts the aforesaid Report and Recommendation in its entirety and, in so doing, affirms the Commissioner's decision that Brown was not disabled.

WHEREFORE, based upon the aforesaid, Brown's Objections to the Magistrate Judge's Report and Recommendation are OVERRULED, and this Court ADOPTS the Report and Recommendation of the United States Magistrate Judge in its entirety. The Commissioner's decision -- that Brown was not disabled -- is AFFIRMED, and Brown's request for a Sentence Six remand is DENIED. Finally, the captioned case is hereby ordered TERMINATED upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this 31st of August, 2012.

***s/THOMAS M. ROSE**

JUDGE THOMAS M. ROSE
UNITED STATES DISTRICT COURT